

SENATE BILL 1045  
By Fowler

AN ACT to amend Tennessee Code Annotated, Title 33; Title 34  
and Title 68, relative to the "Uniform Health Care Decisions  
Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. As used in this act, unless the context clearly requires otherwise:

(1) "Advance health care directive" means an individual instruction or a power of attorney for health care.

(2) "Agent" means an individual designated in a power of attorney for health care to make a health care decision for the individual granting the power.

(3) "Capacity" means an individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision.

(4) "Guardian" means a judicially appointed guardian or conservator having authority to make a health care decision for an individual.

(5) "Health care" means any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect an individual's physical or mental condition.

(6) "Health care decision" means a decision made by an individual or the individual's agent, guardian, or surrogate, regarding the individual's health care, including:

- (i) selection and discharge of health care providers and institutions;
- (ii) approval or disapproval of diagnostic tests, surgical procedures, programs of medication, and orders not to resuscitate; and
- (iii) directions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms of health care.

(7) "Health care institution" means an institution, facility, or agency licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business.

(8) "Health care provider" means an individual licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of a profession.

(9) "Individual instruction" means an individual's direction concerning a health care decision for the individual.

(10) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(11) "Physician" means an individual authorized to practice medicine or osteopathy under Tennessee Code Annotated, Title 63, Chapters 6 or 9.

(12) "Power of attorney for health care" means the designation of an agent to make health care decisions for the individual granting the power.

(13) "Primary physician" means a physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the

individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes the responsibility.

(14) "Reasonably available" means readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the patient's health care needs.

(15) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(16) "Supervising health care provider" means the primary physician or, if there is no primary physician or the primary physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.

(17) "Surrogate" means an individual, other than a patient's agent or guardian, authorized under this act to make a health care decision for the patient.

## SECTION 2.

(a) An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.

(b) An adult or emancipated minor may execute a power of attorney for health care, which may authorize the agent to make any health care decision the principal could have made while having capacity. The power must be in writing and signed by the principal. The power remains in effect notwithstanding the principal's later incapacity and may include individual instructions. Unless related to the principal by blood, marriage, or adoption, an agent may not be an owner, operator, or employee of a residential long-term health care institution regulated under Tennessee Code Annotated, Title 68, Chapter 11, at which the principal is receiving care.

(c) Unless otherwise specified in a power of attorney for health care, the authority of an agent becomes effective only upon a determination that the principal lacks capacity, and ceases to be effective upon a determination that the principal has recovered capacity.

(d) Unless otherwise specified in a written advance health care directive, a determination that an individual lacks or has recovered capacity, or that another condition exists that affects an individual instruction or the authority of an agent, must be made by the primary physician.

(e) An agent shall make a health care decision in accordance with the principal's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the agent's determination of the principal's best interest. In determining the principal's best interest, the agent shall consider the principal's personal values to the extent known to the agent.

(f) A health care decision made by an agent for a principal is effective without judicial approval.

(g) A written advance health care directive may include the individual's nomination of a guardian of the person.

(h) An advance health care directive is valid for purposes of this act if it complies with this act, regardless of when or where executed or communicated.

### SECTION 3.

(a) An individual may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.

(b) An individual may revoke all or part of an advance health care directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke.

(c) A health care provider, agent, guardian, or surrogate who is informed of a revocation shall promptly communicate the fact of the revocation to the supervising health care provider and to any health care institution at which the patient is receiving care.

(d) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as agent unless otherwise specified in the decree or in a power of attorney for health care.

(e) An advance health care directive that conflicts with an earlier advance health care directive revokes the earlier directive to the extent of the conflict.

SECTION 4. The following form may, but need not, be used to create an advance health care directive. The other sections of this act govern the effect of this or any other writing used to create an advance health care directive. An individual may complete or modify all or any part of the following form:

## ADVANCE HEALTH CARE DIRECTIVE

### Explanation

You have the right to give instructions about your own health care. You also have the right to name someone else to make health care decisions for you. This form lets you do either or both of these things. It also lets you express your wishes regarding donation of organs and the designation of your primary physician. If you use this form, you may complete or modify all or any part of it. You are free to use a different form.

Part 1 of this form is a power of attorney for health care. Part 1 lets you name another individual as agent to make health care decisions for you if you become incapable of making your own decisions or if you want someone else to make those decisions for you now even though you are still capable. You may also name an alternate agent to act for you if your first choice is not willing, able, or reasonably available to make decisions for you. Unless related to you, your agent may not be an owner, operator, or employee of a residential long-term health care institution at which you are receiving care.

Unless the form you sign limits the authority of your agent, your agent may make all health care decisions for you. This form has a place for you to limit the authority of your agent. You need not limit the authority of your agent if you wish to rely on your agent for all health care decisions that may have to be made. If you choose not to limit the authority of your agent, your agent will have the right to:

- (a) consent or refuse consent to any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a physical or mental condition;
- (b) select or discharge health care providers and institutions;
- (c) approve or disapprove diagnostic tests, surgical procedures, programs of medication, and orders not to resuscitate; and
- (d) direct the provision, withholding, or withdrawal of artificial nutrition and hydration and all other forms of health care.

Part 2 of this form lets you give specific instructions about any aspect of your health care. Choices are provided for you to express your wishes regarding the provision, withholding, or withdrawal of treatment to keep you alive, including the provision of artificial nutrition and hydration, as well as the provision of pain relief. Space is also provided for you to add to the choices you have made or for you to write out any additional wishes.

Part 3 of this form lets you express an intention to donate your bodily organs and tissues following your death.

Part 4 of this form lets you designate a physician to have primary responsibility for your health care.

After completing this form, sign and date the form at the end. It is recommended but not required that you request two other individuals to sign as witnesses. Give a copy of the signed and completed form to your physician, to any other health care providers you may have, to any health care institution at which you are receiving care, and to any health care agents you have named. You should talk to the person you have named as agent to make sure that he or she understands your wishes and is willing to take the responsibility.

You have the right to revoke this advance health care directive or replace this form at any time.

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## PART 1

### POWER OF ATTORNEY FOR HEALTH CARE

(1) DESIGNATION OF AGENT: I designate the following individual as my agent to make health care decisions for me:

\_\_\_\_\_  
(name of individual you choose as agent)

\_\_\_\_\_

(address) (city) (state) (zip code)

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(home phone) (work phone)

OPTIONAL: If I revoke my agent's authority or if my agent is not willing, able, or reasonably available to make a health care decision for me, I designate as my first alternate agent:

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(name of individual you choose as first alternate agent)

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(address) (city) (state) (zip code)

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(home phone) (work phone)

OPTIONAL: If I revoke the authority of my agent and first alternate agent or if neither is willing, able, or reasonably available to make a health care decision for me, I designate as my second alternate agent:

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(name of individual you choose as second alternate agent)

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(address) (city) (state) (zip code)

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(home phone) (work phone)

(2) AGENT'S AUTHORITY: My agent is authorized to make all health care decisions for me, including decisions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms of health care to keep me alive, except as I state here:

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(Add additional sheets if needed.)

(3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's authority becomes effective when my primary physician determines that I am unable to make my own health care decisions unless I mark the following box. If I mark this box [ ], my agent's authority to make health care decisions for me takes effect immediately.

(4) AGENT'S OBLIGATION: My agent shall make health care decisions for me in accordance with this power of attorney for health care, any instructions I give in Part 2 of this form, and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(5) NOMINATION OF GUARDIAN: If a guardian of my person needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able, or reasonably available to act as guardian, I nominate the alternate agents whom I have named, in the order designated.

## PART 2

### INSTRUCTIONS FOR HEALTH CARE

If you are satisfied to allow your agent to determine what is best for you in making end-of-life decisions, you need not fill out this part of the form. If you do fill out this part of the form, you may strike any wording you do not want.

(6) END-OF-LIFE DECISIONS: I direct that my health care providers and others involved in my care provide, withhold, or withdraw treatment in accordance with the choice I have marked below:

☐ (a) Choice Not To Prolong Life

I do not want my life to be prolonged if (i) I have an incurable and irreversible condition that will result in my death within a relatively short time, (ii) I become unconscious and, to a reasonable degree of medical certainty, I will not regain consciousness, or (iii) the likely risks and burdens of treatment would outweigh the expected benefits, OR

☐ (b) Choice To Prolong Life

I want my life to be prolonged as long as possible within the limits of generally accepted health care standards.

(7) ARTIFICIAL NUTRITION AND HYDRATION: Artificial nutrition and hydration must be provided, withheld, or withdrawn in accordance with the choice I have made in paragraph (6) unless I mark the following box. If I mark this box ☐, artificial nutrition and hydration must be provided regardless of my condition and regardless of the choice I have made in paragraph (6).

(8) RELIEF FROM PAIN: Except as I state in the following space, I direct that treatment for alleviation of pain or discomfort be provided at all times, even if it hastens my death:



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(9) OTHER WISHES: (If you do not agree with any of the optional choices above and wish to write your own, or if you wish to add to the instructions you have given above, you may do so here.) I direct that:

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(Add additional sheets if needed.)

### PART 3

#### DONATION OF ORGANS AT DEATH

(OPTIONAL)

(10) Upon my death (mark applicable box)

☐ (a) I give any needed organs, tissues, or parts, OR

☐ (b) I give the following organs, tissues, or parts only

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(c) My gift is for the following purposes (strike any of the following you do not want)

(i) Transplant

(ii) Therapy

(iii) Research

(iv) Education

### PART 4

#### PRIMARY PHYSICIAN

(OPTIONAL)

(11) I designate the following physician as my primary physician:

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(name of physician)

\_\_\_\_\_  
(address) (city) (state) (zip code)

\_\_\_\_\_  
(phone)

OPTIONAL: If the physician I have designated above is not willing, able, or reasonably available to act as my primary physician, I designate the following physician as my primary physician:

\_\_\_\_\_  
(name of physician)

\_\_\_\_\_  
(address) (city) (state) (zip code)

\_\_\_\_\_  
(phone)

\* \* \* \* \*

(12) EFFECT OF COPY: A copy of this form has the same effect as the original.

(13) SIGNATURES: Sign and date the form here:

\_\_\_\_\_  
(date) (sign your name)

\_\_\_\_\_  
(address) (print your name)

\_\_\_\_\_  
(city) (state)

(Optional) SIGNATURES OF WITNESSES:

First witness

Second witness

\_\_\_\_\_  
(print name)

\_\_\_\_\_  
(print name)

\_\_\_\_\_  
(address)

\_\_\_\_\_  
(address)

\_\_\_\_\_  
(city) (state)

\_\_\_\_\_  
(city) (state)

\_\_\_\_\_  
(signature of witness)

\_\_\_\_\_  
(signature of witness)

\_\_\_\_\_  
(date)

\_\_\_\_\_  
(date)

## SECTION 5.

(a) A surrogate may make a health care decision for a patient who is an adult or emancipated minor if the patient has been determined by the primary physician to lack capacity and no agent or guardian has been appointed or the agent or guardian is not reasonably available.

(b) An adult or emancipated minor may designate any individual to act as surrogate by personally informing the supervising health care provider. In the absence of a designation, or if the designee is not reasonably available, any member of the following classes of the patient's family who is reasonably available, in descending order of priority, may act as surrogate:

- (1) the spouse, unless legally separated;
- (2) an adult child;
- (3) a parent; or
- (4) an adult brother or sister.

(c) If none of the individuals eligible to act as surrogate under subsection (b) is reasonably available, an adult who has exhibited special care and concern for the patient, who is familiar with the patient's personal values, and who is reasonably available may act as surrogate.

(d) A surrogate shall communicate his or her assumption of authority as promptly as practicable to the members of the patient's family specified in subsection (b) who can be readily contacted.

(e) If more than one member of a class assumes authority to act as surrogate, and they do not agree on a health care decision and the supervising health care provider is so informed, the supervising health care provider shall comply with the decision of a majority of the members of that class who have communicated their views to the provider. If the class is evenly divided concerning the health care decision and the supervising health care provider is so informed, that class and all individuals having lower priority are disqualified from making the decision.

(f) A surrogate shall make a health care decision in accordance with the patient's individual instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the patient's best interest. In determining the patient's best interest, the surrogate shall consider the patient's personal values to the extent known to the surrogate.

(g) A health care decision made by a surrogate for a patient is effective without judicial approval.

(h) An individual at any time may disqualify another, including a member of the individual's family, from acting as the individual's surrogate by a signed writing or by personally informing the supervising healthcare provider of the disqualification.

(i) Unless related to the patient by blood, marriage, or adoption, a surrogate may not be an owner, operator, or employee of a residential long-term health care institution regulated under Tennessee Code Annotated, Title 68, Chapter 11, at which the patient is receiving care.

(j) A supervising health care provider may require an individual claiming the right to act as surrogate for a patient to provide a written declaration under penalty of perjury stating facts and circumstances reasonably sufficient to establish the claimed authority.

#### SECTION 6.

(a) A guardian shall comply with the ward's individual instructions and may not revoke the ward's advance health care directive unless the appointing court expressly so authorizes.

(b) Absent a court order to the contrary, a healthcare decision of an agent takes precedence over that of a guardian.

(c) A health care decision made by a guardian for the ward is effective without judicial approval.

#### SECTION 7.

(a) Before implementing a health care decision made for a patient, a supervising health care provider, if possible, shall promptly communicate to the patient the decision made and the identity of the person making the decision.

(b) A supervising health care provider who knows of the existence of an advance health care directive, a revocation of an advance health care directive, or a designation or disqualification of a surrogate, shall promptly record its existence in the patient's health care record and, if it is in writing, shall request a copy and if one is furnished shall arrange for its maintenance in the health care record.

(c) A primary physician who makes or is informed of a determination that a patient lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of an agent, guardian, or surrogate, shall promptly record the determination in the patient's health care record and communicate the determination to, the patient, if possible, and to any person then authorized to make health care decisions for the patient.

(d) Except as provided in subsections (e) and (f), a health care provider or institution providing care to a patient shall:

(1) comply with an individual instruction of the patient and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the patient; and

(2) comply with a health care decision for the patient made by a person then authorized to make health care decisions for the patient to the same extent as if the decision had been made by the patient while having capacity.

(e) A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience. A health care institution may decline to comply with an individual instruction or health care decision if the instruction or decision is contrary to a policy of the institution which is expressly based on reasons of conscience and if the policy was timely communicated to the patient or to a person then authorized to make health care decisions for the patient.

(f) A health care provider or institution may decline to comply with an individual instruction or health care decision that requires medically ineffective health care or health care contrary to generally accepted health care standards applicable to the health care provider or institution.

(g) A health care provider or institution that declines to comply with an individual instruction or health care decision shall:

(1) promptly so inform the patient, if possible, and any person then authorized to make health care decisions for the patient;

(2) provide continuing care to the patient until a transfer can be effected; and

(3) unless the patient or person then authorized to make health care decisions for the patient refuses assistance, immediately make all reasonable

efforts to assist in the transfer of the patient to another health care provider or institution that is willing to comply with the instruction or decision.

(h) A health care provider or institution may not require or prohibit the execution or revocation of an advance health care directive as a condition for providing health care.

SECTION 8. Unless otherwise specified in an advance health care directive, a person then authorized to make health care decisions for a patient has the same rights as the patient to request, receive, examine, copy, and consent to the disclosure of medical or any other health care information.

#### SECTION 9.

(a) A health care provider or institution acting in good faith and in accordance with generally accepted health care standards applicable to the health care provider or institution is not subject to civil or criminal liability or to discipline for unprofessional conduct for:

(1) complying with a health care decision of a person apparently having authority to make a health care decision for a patient, including a decision to withhold or withdraw health care;

(2) declining to comply with a health care decision of a person based on a belief that the person then lacked authority; or

(3) complying with an advance health care directive and assuming that the directive was valid when made and has not been revoked or terminated.

(b) An individual acting as agent or surrogate under this act is not subject to civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good faith.

#### SECTION 10.

(a) A health care provider or institution that intentionally violates this act is subject to liability to the aggrieved individual for damages of five hundred dollars (\$500) or actual damages resulting from the violation, whichever is greater, plus reasonable attorney's fees.

(b) A person who intentionally falsifies, forges, conceals, defaces, or obliterates an individual's advance health care directive or a revocation of an advance health care directive without the individual's consent, or who coerces or fraudulently induces an individual to give, revoke, or not to give an advance healthcare directive, is subject to liability to that individual for damages of two thousand five hundred dollars (\$2,500) or actual damages resulting from the action, whichever is greater, plus reasonable attorney's fees.

#### SECTION 11.

(a) This act does not affect the right of an individual to make health care decisions while having capacity to do so.

(b) An individual is presumed to have capacity to make a health care decision, to give or revoke an advance health care directive, and to designate or disqualify a surrogate.

SECTION 12. A copy of a written advance health care directive, revocation of an advance health care directive, or designation or disqualification of a surrogate has the same effect as the original.

#### SECTION 13.

(a) This act does not create a presumption concerning the intention of an individual who has not made or who has revoked an advance health care directive.

(b) Death resulting from the withholding or withdrawal of health care in accordance with this act does not for any purpose constitute a suicide or homicide or



legally impair or invalidate a policy of insurance or an annuity providing a death benefit, notwithstanding any term of the policy or annuity to the contrary.

(c) This act does not authorize mercy killing, assisted suicide, euthanasia, or the provision, withholding, or withdrawal of health care, to the extent prohibited by other statutes of this state.

(d) This act does not authorize or require a health care provider or institution to provide health care contrary to generally accepted health care standards applicable to the health care provider or institution.

(e) This act does not authorize an agent or surrogate to consent to the admission of an individual to a mental health care institution unless the individual's written advance health care directive expressly so provides.

(f) This act does not affect other statutes of this state governing treatment for mental illness of an individual involuntarily committed to a mental health care institution under Tennessee Code Annotated, Title 33, Chapter 6.

SECTION 14. On petition of a patient, the patient's agent, guardian, or surrogate, a health care provider or institution involved with the patient's care, or an individual described in Section 5(b) or (c), a court of competent jurisdiction may enjoin or direct a health care decision or order other equitable relief. A proceeding under this section shall be expedited on the court's civil dockets.

SECTION 15. This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject matter of this act among states enacting it.

SECTION 16. This act may be cited as the Uniform Health Care Decisions Act.

SECTION 17. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SECTION 18. Tennessee Code Annotated, Section 68-11-224, is amended by deleting the section in its entirety and by substituting instead the following:

(a) A durable do not resuscitate order may be issued by a physician for his patient with whom he has a bona fide physician/patient relationship as defined in the guidelines of the board of medical examiners, and only with the consent of the patient or, if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon the request of and with the consent of the person authorized to consent on the patient's behalf.

(b) This section shall not authorize any health care provider or practitioner to follow a durable do not resuscitate order for any patient who is able to, and does, express to such health care provider or practitioner the desire to be resuscitated in the event of cardiac or respiratory arrest.

If the patient is a minor or is otherwise incapable of making an informed decision, the expression of the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall so revoke the provider's or practitioner's authority to follow a durable do not resuscitate order.

(c) Durable do not resuscitate orders issued in accordance with this section shall remain valid and in effect until revoked. In accordance with this section and applicable regulations, (i) qualified emergency medical services personnel under Title 68, Chapter 140, Part 5, and (ii) licensed health care practitioners in any facility, program or organization operated or licensed by the board for licensing health care facilities or by the department of mental health and developmental disabilities or operated, licensed, or owned by another state agency are authorized to follow durable do not resuscitate orders that are available to them in a form approved by the commissioner of health.

(d) The provisions of this section shall not authorize any qualified emergency medical services personnel or licensed health care provider or practitioner who is

attending the patient at the time of cardiac or respiratory arrest to provide, continue, withhold, or withdraw treatment if such provider or practitioner knows that taking such action is protested by the patient incapable of making an informed decision. No person shall authorize providing, continuing, withholding, or withdrawing treatment pursuant to this section that such person knows, or upon reasonable inquiry ought to know, is contrary to the religious beliefs or basic values of a patient incapable of making an informed decision or the wishes of such patient incapable of making an informed decision or the wishes of such patient fairly expressed when the patient was capable of making an informed decision. Further, this section shall not authorize the withholding of other medical interventions, such as intravenous fluids, oxygen, or other therapies deemed necessary to provide comfort care or to alleviate pain.

(e) For the purposes of this section:

(1) "Health care provider" includes, but is not limited to, qualified emergency medical services personnel.

(2) "Person authorized to consent on the patient's behalf" means any person authorized by law to consent on behalf of the patient incapable of making an informed decision or, in the case of a minor child, the parent or parents having custody of the child or the child's legal guardian or as otherwise provided by law.

(f) This section shall not prevent, prohibit, or limit a physician from issuing a written order, other than a durable do not resuscitate order, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practices.

(g) Valid do not resuscitate orders or emergency medical services do not resuscitate orders issued before July 1, 2003, pursuant to the then-current law, shall remain valid and shall be given effect as provided in this section.

(h)

(1) The board for licensing health care facilities shall promulgate rules regarding procedures for the withholding of resuscitative services from patients in accordance with the provisions of this act and this section.

(2) The rules shall address:

(A) The mechanism or mechanisms for reaching decisions about the withholding of resuscitative services from individual patients;

(B) The mechanism or mechanisms for resolving conflicts in decision making, should they arise; and

(C) The roles of physicians and, when applicable, of nursing personnel, other appropriate staff, and family members in the decision to withhold resuscitative services.

(3) The rules shall include provisions designed to assure that patients' rights are respected when decisions are made to withhold resuscitative services and shall include the requirement that appropriate orders be written by the physician primarily responsible for the patient, and that documentation be made in the patient's medical record if resuscitative services are to be withheld.

(4) The provisions of this section shall not be construed or implemented in any manner which restricts or impairs the decision-making authority of the attorney-in-fact designated in any durable power-of-attorney authorized in Title 34, Chapter 6, Part 2.

SECTION 19. This act shall take effect July 1, 2003, the public welfare requiring it.